United Nations CCPR/C/SR.3051

International Covenant on Civil and Political Rights

Distr.: General
13 October 2014
English
Original: French

Human Rights Committee
110th session

Summary record of the 3051st meeting
Held at the Palais Wilson, Geneva, on Wednesday, 19 March 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Nepal (continued)

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Nepal (continued) (CCPR/C/NPL/2; CCPR/C/NPL/Q/2 and Add.1; HRI/CORE/1/Add.42)

1. *At the invitation of the Chairperson, the delegation of Nepal took places at the Committee table.*

2. **Mr. Dhakal** (Nepal) said that emergency services for victims of domestic violence had been put in place in 15 hospitals, and shelters had been created in 15 districts of the country. Those facilities, which offered immediate assistance to victims, in addition to medical care, legal advisory services, rehabilitation services and psychosocial support, were financed by a public fund established specially for that purpose. In 2014, the fund had been allocated 20 million Nepalese rupees. Nepal was determined to fully implement the Committee's Views, and strategic, institutional and administrative measures were being taken to that end. It did not, however, consider it necessary to have a legal definition of serious human rights violations as, in its opinion, clear and well understood concepts of international law did not need to be incorporated into domestic law. Nevertheless, it planned to criminalize certain acts that were not yet punishable, including violence against women. A bill on the subject should be adopted shortly. With regard to the Attorney General's power to discontinue prosecutions, under the Act of 1992, a list of cases that could not be struck off the roll had been drawn up and new guidelines on the issue had been developed. Non-citizens enjoyed all the rights guaranteed under the Constitution, with the exception of a few, such as the rights to vote, become a member of a political party or trade union, and not be forced into exile. Lastly, in the context of the reform of criminal justice, several bills had been drafted, inter alia, on rape, domestic violence and victims' access to justice, and a draft amendment to the Criminal Code to criminalize torture would be submitted to parliament.

3. **Mr. Koirala** (Nepal) said that, in accordance with the Interim Constitution of 2007 and the Nationality Act of 2006, all persons aged 16 or over could obtain a citizenship certificate without discrimination. In 2013, some 421,400 certificates had thus been issued. The Government had instructed the Ministry of Peace and Reconstruction to facilitate the return of displaced persons, particularly by helping them recover their land. Although Nepal was not a party to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol relating thereto, it had admitted many foreigners to its territory and intended to pursue that policy. In particular, over the past 5 years, it had granted asylum to almost 2,500 Tibetan refugees. Since 1995, identity cards in line with international standards had been issued to refugees. Moreover, since 2003, 622 public officials had been prosecuted for human rights violations, and around 60 of them had been subjected to disciplinary penalties.

4. **Mr. Ghimire** (Nepal) said that the Supreme Court had established that, in the event of conflict between domestic law and the Covenant, the latter would take precedence. It was becoming increasingly common for the Court to apply international treaties directly. As part of the fight against stereotypes and the promotion of gender equality, Nepal had opted for a multifaceted approach with the main objective of changing attitudes. The Government had introduced affirmative action measures, including quotas, which had contributed to a marked improvement in the representation of women in various public service sectors. The practice of witchcraft was a criminal offence, for which 120 people had been tried between 2007 and 2013. According to a study conducted by the Ministry of Women, some 60 harmful traditions and practices, such as those associated with the dowry

system, subsisted in the country. There were plans to draft a bill prohibiting all harmful practices.

5. The Government applied a zero-tolerance policy to discrimination based on caste or untouchability. A law prohibiting such discrimination had been adopted in 2011 and, recently, the Ministry of Home Affairs had sent a circular to the authorities of the 75 districts in the country enjoining them to take all necessary measures to implement the law. In 2012, 23 cases of discrimination against an untouchable had been brought before the courts and sentences had been handed down in 7 of them. The National Dalit Commission, which comprised 60 members, received support from the Government, and a bill to give greater independence and autonomy to the body had been submitted to parliament. Currently, 59 indigenous peoples were officially recognized. In 2013, the Ministry of Justice had launched a campaign in rural areas to raise awareness of topics such as the rights of women, Dalits and indigenous peoples, the prohibition of caste-based discrimination and legal aid.

6. **Mr. Neuman** asked whether a foreigner married to a Nepalese woman had the right to obtain citizenship in the State party under the same conditions as a foreign woman married to a Nepalese man. Returning to the issue of witchcraft, he explained that he had sought information on the punishment of violence against persons accused of performing the practice, and not on the prohibition of the practice itself.

7. **Mr. Kälin** wished to know how the State party could punish the perpetrators of serious human rights violations if the acts were not punishable by law. He requested more detailed statistics on offences committed by members of the armed forces and the police, and on any sentences imposed.

8. **Mr. Salvioli** invited the delegation to comment on the obligation for relatives of disappeared persons to obtain a death certificate before they could file a civil suit. He also wished to know whether the State party intended to create a DNA database or adopt other measures to identify the remains of disappeared persons.

9. **Mr. Vardzelashvili** wished to know why the secretary of the National Human Rights Commission was appointed by the Government, and how the latter proceeded in that respect. He also wished to know what mechanisms were in place to ensure the protection of victims and witnesses of human rights violations.

10. **Mr. Iwasawa** invited the delegation to comment on the difficulties apparently faced by indigenous peoples in accessing education and the public service since Nepali had been declared the official language.

11. **The Chairperson** sought clarification of the fact that an executive order that had been deemed unconstitutional could be resubmitted to parliament in the form of a bill. He also wished to know why the systematic practice of torture subsisted in spite of the steps taken to put an end to it. Lastly, the delegation might explain who was responsible for proving that evidence obtained under duress was inadmissible.

12. **Ms. Waterval** invited the delegation to provide a detailed response to the questions on trafficking in persons and human organs addressed in paragraph 15 of the list of issues. She also asked what measures were being taken to disseminate the Covenant, and whether the State party planned to have it translated into any languages other than the official one, bearing in mind that the country had 92 national languages.

13. **Mr. Neuman** enquired about the steps being taken to ensure respect for the rights of detainees. He wished to know whether the State party had drawn up a list of detention centres, expressly excluding all detention at other locations, and whether pretrial detention took place in police premises or under the responsibility of a separate authority. It would also be useful to know what was being done to combat prison overcrowding, and whether

there were plans to establish an independent body responsible for regularly inspecting detention facilities or, failing that, to authorize NGOs to do so. Lastly, he invited the delegation to clarify the following points: the number of complaints of ill-treatment in detention filed over the past two years and their outcome; the reasons why the State party did not intend to raise the age of criminal responsibility, currently set at 10 years; and the procedures put in place to guarantee that the detention of children would be used only as a last resort.

14. **Mr. Iwasawa** invited the delegation to comment on reports that corruption and abuse of power were widespread in the judiciary. The delegation should also elaborate on the potential increase in the income ceiling for receiving legal aid.

15. **Mr. Kälin** wished to know whether offences other than those indicated in the written replies fell within the remit of Chief District Officers, and what the maximum penalties were. He also asked whether it was true that courts of appeal were only competent to rule on procedural matters and, if so, how such a situation was compatible with article 14 of the Covenant. Given that the last local elections had been held in 1997, the delegation might explain how the postponement of elections was compatible with the right to vote periodically, which was enshrined in article 25 of the Covenant. With regard to refugees, how did the State party intend to honour its non-refoulement obligation in the absence of any asylum procedures? Lastly, the Committee wished to know the delegation's views on the heavy fines for illegal residence that were reportedly imposed on refugees, even though they had been recognized as such by the Office of the United Nations High Commissioner for Refugees.

16. **Mr. Fathalla** said that he would appreciate additional information on the complaints lodged against members of the security forces during the state of emergency and since the latter had been lifted.

17. **The Chairperson** asked for details of the investigations that had led to the allegations of assault, death threats and reprisals against members of the security forces being declared unfounded.

The meeting was suspended at 11.35 a.m. and resumed at noon.

18. **Mr. Koirala** (Nepal) said that the Ministry of Home Affairs dealt with applications from asylum seekers on a case-by-case basis. In respect of detention, emphasis was being placed on renovating facilities, establishing an open prison regime and a system of community service, providing legal aid and implementing vocational training and other measures to support the social reintegration of detainees.

19. **Mr. Dhakal** (Nepal) explained that, pursuant to article 88 of the Interim Constitution, all executive orders had to be submitted to parliament, which could adopt them as they stood, amend them or reject them. In the last case, the executive branch had to submit a bill to replace the order concerned. Certain rights, such as the right to vote, were reserved for Nepalese nationals, but non-citizens enjoyed all the fundamental freedoms protected by the Covenant. Although there was no law defining serious human rights violations, that did not mean that such acts went unpunished. There were provisions related to the exercise of authority in good faith, which did not amount to a form of impunity. The opening of a DNA database was planned, along with other measures to render justice to victims of violations. The secretary of the National Human Rights Commission was indeed appointed by the Government, but on the recommendation of the Commission, and the Supreme Court had validated the procedure, which in no way compromised the Commission's financial autonomy or independence.

20. Under the Evidence Act of 1974, confessions obtained under torture or duress were inadmissible, and the authorities were responsible for proving that the law had been

complied with during the investigation. Torture was prohibited in Nepal, and there were plans to draft a law punishing all forms of torture and ill-treatment, in compliance with the recommendations of the Committee against Torture. Isolated cases had been identified, but it could not be said that there was systematic or institutionalized torture. Similarly, there was no widespread corruption in the judiciary. Judges and magistrates were subject to anti-corruption laws; a code of conduct had been established, and the Judicial Council could file complaints against magistrates who failed in their duties. Freedom of religion was protected in accordance with the Constitution and the Civil Liberties Act. Human rights defenders enjoyed the same rights and freedoms as all other persons. The Government was aware of the crucial role that they played and endeavoured to create conditions conducive to the performance of their duties. In particular, it was committed to investigating complaints of alleged attacks against them. New guidelines on the protection of journalists had also been adopted.

21. **Mr. Ghimire** (Nepal) said that article 10 (b) of the General Code, which punished all acts of violence related to accusations of witchcraft, had been applied in more than one hundred cases between 2007 and 2013. In practice, cooperation between civil society and government authorities still had to be improved in order to bring about a change of attitudes. The Government believed that disseminating the Covenant in the official language only did not constitute an obstacle to informing the public. Pursuant to article 6 of the Interim Constitution, the use of other languages was reserved for local institutions. Primary education was also provided in all the national languages. Human trafficking was punished under the 2007 Act relating thereto. Prevention and awareness-raising campaigns were being conducted, and victims were offered services, including rehabilitation and paralegal assistance. Between 2011 and 2012, 118 cases of sexual exploitation had given rise to legal proceedings. The number of cases reported was on the rise, as were the number of prosecutions brought and sentences handed down (71 compared with 47 acquittals in 2009, and 87 compared with 57 acquittals in 2011), and additional resources had been made available for shelters. Steps had been taken to strengthen legal aid, which was a key element of access to justice, but more progress was needed. The Government planned to standardize the service at the national level and guarantee access to a lawyer to all detainees, irrespective of their status.

22. **Mr. Malla** (Nepal) recalled that Nepal was still in a transitional phase following the internal conflict of 1996–2006. He hoped that the Committee's concluding observations would provide useful guidance to help the Government continue its efforts in favour of human rights.

23. **The Chairperson** said that the decision of the Supreme Court to stay the implementation of Ordinance No. 2069 (2013) reflected the degree of independence of Nepalese courts, particularly in the context of transitional justice. He paid tribute to the quality of existing human rights protection mechanisms in the legislative and institutional spheres, but said that there were still shortcomings to address in practice, especially in respect of the impunity attached to serious human rights violations.

The meeting rose at 1 p.m.